

APPEAL NO. 020725
FILED MAY 14, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 20, 2002. The appellant (carrier) appeals, contending the hearing officer erred in her determinations that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 13th quarter because the carrier waived the right to dispute entitlement to that quarter and that the carrier is not relieved of liability for SIBs because the claimant timely filed an Application for [SIBs] (TWCC-52). The carrier also contends that the hearing officer erred because she failed to make a determination of whether the claimant is entitled to SIBs based on the merits of the claimant's claim.

DECISION

Affirmed.

The hearing officer did not err in her determination that the carrier is not relieved of liability for SIBs because the claimant timely filed TWCC-52 for the 13th quarter. The carrier relies on Texas Workers' Compensation Commission Appeal No. 941629, decided January 20, 1995, and Texas Workers' Compensation Commission Appeal No. 960025, decided February 15, 1996; however, we cannot agree that those cases, which considered a claimant's failure to disclose earnings during the filing period, provide support for the carrier's position. In Texas Workers' Compensation Commission Appeal No. 980153, decided March 11, 1998, we noted that an incomplete TWCC-52 should only be equated to a nonfiling in instances of "clear and intentional . . . nondisclosure," as opposed to cases where the omitted information is brought forward at a later date. *See also* Texas Workers' Compensation Commission Appeal No. 970435, decided April 24, 1997 (where we similarly cautioned against "wholesale application" of Appeal No. 941629, *supra*, noting that the omission should be "akin to fraud"). There is no evidence that the claimant's failure to include the wage information on his initial TWCC-52 was a "clear and intentional nondisclosure." To the contrary, in this instance, the claimant amended his TWCC-52 and disclosed the information to the carrier within five weeks of having filed his initial application. Accordingly, the hearing officer did not err in determining that the claimant's TWCC-52 was timely filed and that the carrier is not relieved of liability for 13th quarter SIBs.

Additionally, the hearing officer did not err in determining that the carrier waived its right to dispute the claimant's entitlement to SIBs for the 13th quarter. Rule 130.104(a) provides, in part, that not later than 10 days after receiving the TWCC-52, the carrier shall determine continuing entitlement to SIBs and send written notice of the determination to the injured employee. Rule 130.108(c) provides, in part, that a carrier waives the right to contest continuing entitlement to SIBs if the carrier fails to request a benefit review conference within 10 days after receipt of the TWCC-52. It is undisputed that the carrier did not dispute the claimant's entitlement to SIBs within 10 days of the receipt of the initial

TWCC-52; accordingly, the hearing officer did not err in determining that the carrier waived the right to dispute entitlement to the 13th quarter of SIBs.

Further, the hearing officer did not err because she failed to make a determination of whether the claimant is entitled to SIBs based on the merits of his claim. Just as an injury, which might otherwise not be compensable becomes compensable when the carrier fails to timely contest compensability, this claimant became "entitled" to SIBs as a result of the carrier's failure to contest entitlement to SIBs. See Texas Workers' Compensation Commission Appeal No. 010861, decided May 30, 2001.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GEORGE MICHAEL JONES
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Roy L. Warren
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge